The meeting was called to order at 10.25 a.m.

CONSIDERATION OF THE QUESTION CONCERNING THE FINALIZATION AND ADOPTION OF A CONVENTION ON THE ESTABLISHMENT OF AN INTERNATIONAL CRIMINAL COURT IN ACCORDANCE WITH GENERAL ASSEMBLY RESOLUTIONS 51/207 OF 17 DECEMBER 1996 AND 52/160 OF 15 DECEMBER 1997 (*continued*) (A/CONF.183/2/Add.1)

1. **The CHAIRMAN** said that more time was needed to conclude the informal consultations on certain aspects of Part 1 of the draft Statute. The Committee of the Whole would therefore begin its consideration of Part 2.

Part 2 of the draft Statute

Article 5

2. **Mr. van der WIND** (Netherlands), acting as Coordinator for Part 2, said that discussions in the past had focused on the question of the selection of the crimes to be included within the Court's jurisdiction and on their definition. A consensus had been reached on the inclusion of the crime of genocide and since there seemed to be wide support for the definition in articles 2 and 3 of the 1948 Genocide Convention, which was reproduced in the draft Statute, perhaps the Committee of the Whole need only discuss it briefly before referring it to the Drafting Committee.

3. It was still not clear whether the crime of aggression should be included. The number of States accepting inclusion had risen over the years, but much would depend on the definition and the role of the Security Council.

4. With respect to the definition of aggression, there were two precedents: the statutes of the Nuremberg and Tokyo Tribunals and General Assembly resolution 3314 (XXIV) on the definition of aggression, adopted by consensus by the Assembly.

5. On the role of the Security Council, the issue was whether the Court might consider the crime of aggression only after the Security Council had determined that a State had committed such an act and the Court would then have the duty to look into the criminal responsibility of the person who had ordered it, or whether the Court might also consider a crime of aggression without such a prior determination by the Security Council.

6. In the text of the draft Statute three options were submitted, but since in preceding discussions it had practically been agreed to drop option 1, the Committee of the Whole should now concentrate on options 2 and 3.

7. He suggested that informal consultations should be held following a brief discussion in the Committee of the Whole.

8. There seemed to be general agreement that war crimes should be included within the Court's jurisdiction. There were many precedents for the definition, ranging from the 1907 Hague Convention respecting the Laws and Customs of War on Land to the 1977 Protocols Additional to the 1949 Geneva Conventions.

9. There had been discussion of the question of what could be considered international customary law, but no general agreement had been reached on that matter.

10. The definition in the draft Statute contained four sections. Section A dealt with norms applicable to international armed conflict and referred to grave breaches of the four 1949 Geneva Conventions. The text followed that of the 1949 Conventions, and there seemed to be general agreement on its inclusion and on its wording.

11. Section B, also applicable to international armed conflict, was a collection of elements from different sources retaining the language of those sources as far as possible, with certain exceptions to meet the concerns of delegations.

12. The paragraphs for which there was only one option seemed to be generally acceptable, but there were several paragraphs with up to four or five options that would need further discussion.

13. Section C dealt with norms applicable in internal armed conflict and was based on the article 3 common to the 1949 Geneva Conventions, with almost identical wording. Most delegations were in favour of the inclusion of section C, but some States had expressed concern at its inclusion.

14. Section D, also containing norms applicable in internal armed conflict, was a collection of norms from different sources. Here too the question of its inclusion was still open: a majority was in favour of including section D in the definition of war crimes but not all States agreed with that view. If section D was included, further discussion would be needed with respect to some paragraphs, certain of which were identical, or practically so, with paragraphs in section B. The result of the discussions on section B might therefore be relevant to section D.

15. In addition to the definition, three further issues relating to the question of war crimes remained outstanding. The three options submitted under the heading "Elsewhere in the Statute" required further discussion. Secondly, discussion was needed on the drafting and scope of article Y reading: "Without prejudice to the applications of the provisions of this Statute, nothing in this part of the Statute shall be interpreted as limiting or prejudicing in any way existing or developing rules of international law." Lastly, there remained the question of the need to elaborate "elements of crimes" and of their relationship with the Statute itself.

16. There seemed to be general agreement concerning inclusion of crimes against humanity. The definition was based on several precedents from the Nuremberg, Tokyo, Rwanda and former Yugoslavia Tribunals but it also contained some new elements. The major question to be decided in respect of the definition was whether, in the introductory part of paragraph 1, there was a need to enlarge on the definitions in the subparagraphs, and whether paragraph 2, connected with the "elements of crimes", should be included.

17. There had been proposals to include three additional crimes under the jurisdiction of the Court: crimes of terrorism, crimes against United Nations and associated personnel and crimes concerning illicit trafficking in narcotic drugs. The question of including those crimes had still to be determined, and if it was decided to include them consideration would have to be given to their definition.

18. He suggested that the discussion in the Committee of the Whole should be in three parts: crimes against humanity and if necessary the crime of genocide; the definition of war crimes; and the definition and inclusion of aggression and other crimes. As far as genocide was concerned, perhaps only a brief discussion would be necessary before the text was referred to the Drafting Committee. On crimes against humanity, further discussion was needed on the major issues, either in the Committee of the Whole or in informal discussions. The Committee of the Whole would have to discuss the definition of war crimes, focusing on the outstanding issues he had mentioned, and further informal talks would also be needed. On the question of aggression, discussion in the Committee of the

Whole and informal talks were needed. On other crimes, there was a need for a discussion in the Committee of the Whole focusing on the question of their inclusion and perhaps further informal talks.

19. **The CHAIRMAN** agreed with those suggestions and called for comments on crimes against humanity and, if required, on genocide.

20. **Mr. KAUL** (Germany) said that his delegation considered that consensus with respect to the crime of genocide had already been reached, and the Genocide Convention contained a generally acceptable definition that could be used in the Statute. The problems relating to conspiracy to commit genocide, incitement to genocide, attempt and complicity could be more adequately dealt with in Part 3 of the Statute, on "General principles of criminal law".

21. His delegation considered that crimes against humanity could be committed in times of peace as well as war and that any other proposal would be a retrogression in the development of international humanitarian law. Such crimes could be committed as part of a widespread or systematic commission of such acts. All acts currently listed in subparagraphs (a) to (j) of paragraph 1 under "Crimes against humanity" should be covered. His delegation did not, however, believe that the definitions contained in paragraph 2 should be included in the Statute itself.

22. **Mr. CHUKRI** (Syrian Arab Republic) said that his delegation had no difficulty in accepting the inclusion of the crime of genocide since the relevant text corresponded to that of the 1949 Genocide Convention to which it was a party. His delegation could also accept the inclusion of crimes against humanity in the case of international armed conflict, but not in the case of internal conflict, at least for the time being.

23. He considered that the wording "enforced disappearance of persons" in paragraph 1 (i) was unclear because it could be used in reference to liberation movements fighting for their freedom and to regain their territory.

24. **Mr. AL AWADI** (United Arab Emirates) agreed with the remarks of the representative of the Syrian Arab Republic with regard to the inclusion of the crime of genocide in the Statute and the confining of the concept of crimes against humanity to international conflicts.

25. His delegation had reservations on the wording of paragraph 1 (d), "Deportation or forcible transfer of population", which might not be in line with definitions in international instruments.

26. **Mr. Khalid Bin Ali Abdullah AL-KHALIFA** (Bahrain) said that the current wording of the definition of the crime of genocide should be retained.

27. He associated himself with the comments of the representatives of the Syrian Arab Republic and the United Arab Emirates concerning crimes against humanity.

28. **Mr. SADI** (Jordan) joined the consensus on the inclusion of genocide in the Statute. With respect to crimes against humanity, no distinction should be made between international and internal conflicts; that would introduce double standards, which his country could not accept.

29. **Mr. HAMDAN** (Lebanon) supported the definition of the crime of genocide, endorsed the points made by the representatives of the Syrian Arab Republic, Bahrain and the United Arab Emirates, and agreed with the German proposal to drop paragraph 2 defining crimes against humanity.

30. **Mr. DIVE** (Belgium) associated himself with the statement of the German representative and welcomed the text on the crime of genocide. He endorsed the point made by the representative of Jordan on the need to include internal conflicts, and agreed that paragraph 2 should be deleted.

31. **Mr. MADANI** (Saudi Arabia) endorsed the remarks of the representatives of the United Arab Emirates and the Syrian Arab Republic with respect to the crime of genocide and agreed that the provisions on crimes against humanity should not apply to internal conflicts.

32. His delegation opposed the reference to "enforced pregnancy" in paragraph (e *bis*) of section D under "War crimes" ("OPTION I"), since his country was opposed to abortion.

33. **Mr. DHANBRI** (Tunisia) agreed with the drafting of the definition of genocide.

34. His delegation interpreted crimes against humanity as taking place only in international armed conflicts; otherwise intervention by the Court would amount to interference in internal affairs contrary to the principles of the United Nations. He proposed deleting the first alternative in square brackets in paragraph 1 under "crimes against humanity" and adopting the second alternative, which was more detailed, with the word "international" added before the words "armed conflict".

35. **Mr. JANDA** (Czech Republic) endorsed the statement made by the German representative with regard to genocide.

36. As far as crimes against humanity were concerned, his delegation considered that the wording in paragraph 1 should be "widespread or systematic commission of such acts". It also considered that crimes against humanity should be punishable whether committed in peace or in war. Subparagraphs (a) to (j) should be retained and all the square brackets removed.

37. He agreed with the representative of Germany that the definitions in paragraph 2 were unnecessary.

38. **Mr. CHERQUAOUI** (Morocco) supported the statements made by the representatives of the Syrian Arab Republic and the United Arab Emirates with respect to the inclusion of genocide within the Court's jurisdiction.

39. His delegation considered that crimes against humanity should be considered only in the context of international conflict.

40. **Mr. AGIUS** (Malta) endorsed the positions of the representatives of Germany and Jordan with respect both to genocide and to crimes against humanity. He drew attention to Security Council resolution 808 (1993) establishing the International Criminal Tribunal for the Former Yugoslavia. It was clear that crimes against humanity directed against a civilian population were contrary to international law regardless of whether they were committed in an international or internal armed conflict.

41. **Mr. KERMA** (Algeria) said that his delegation was in favour of including the crime of genocide within the Court's remit. Like the Non-Aligned Movement, his delegation also endorsed the idea of including the crime of aggression. The definition in General Assembly resolution 3314 (XXIV) was relevant in that regard.

42. He endorsed the position of the representatives of Tunisia and the Syrian Arab Republic with respect to crimes against humanity.

43. As far as other crimes were concerned, his delegation was in favour of including terrorism and illicit drug trafficking.

44. **Mr. RAMA RAO** (India) agreed that the crime of genocide should be included. Discussion on the list of punishable acts should be deferred until the Working Group on General Principles of Criminal Law (Part 3 of the Statute) had reported.

45. On crimes against humanity, his delegation considered that the items listed in paragraph 1 (a) to (j) would be meaningless unless a *chapeau* to paragraph 1 were included, as otherwise an individual murder, for instance, would fall within the jurisdiction of the Court, and that was clearly not the intention. His delegation's preference was for "widespread and systematic" rather than "widespread or systematic".

46. As far as the words "in armed conflict" were concerned, his delegation considered that if no distinction were made between internal and international conflict, the Committee would have to consider whether the use of obnoxious weapons listed under war crimes should not also be included in crimes against humanity.

47. His delegation was not in favour of including enforced disappearance of persons in the list of crimes against humanity.

48. He agreed with the representative of Germany that paragraph 2 should be left out of the Statute.

49. **Mr. VERGNE SABOIA** (Brazil) said his delegation agreed to the inclusion of the crime of genocide and to the definition in the draft. With regard to the text within square brackets following the definition, his delegation shared the view that the references to "conspiracy" and the like should be in another part of the draft Statute.

50. His delegation also agreed with the inclusion of crimes against humanity and considered that the *chapeau* of paragraph 1 in that section was acceptable. His delegation was in favour of the formulation "as part of a widespread or systematic attack ...".

51. His delegation could agree to defining crimes against humanity irrespective of the existence of unarmed conflict. It could also accept the list of crimes in paragraph 1 (a) to (j), but would prefer a drafting more closely related to that of existing international instruments.

52. **Mr. DIAZ PANIAGUA** (Costa Rica) said that his delegation did not agree with the representative of India that enforced disappearance of persons should be dropped from the list of crimes against humanity. In view of Latin America's unfortunate experience, it must be included.

53. With regard to the *chapeau* of paragraph 1, he agreed with the remarks of the Czech representative and could accept the other proposals made. No distinction should be made with regard to the character of the armed conflict in which acts constituting crimes against humanity were committed.

54. **Mr. SKIBSTED** (Denmark) endorsed the statement made by the German representative and said that he could accept the definition of the crime of genocide as contained in the draft Statute.

55. As far as crimes against humanity were concerned, his delegation believed that the definition in the Statute should cover acts committed as part of a widespread or systematic commission of such acts against any population, whether committed in peacetime or in international or internal armed conflict.

56. As to the specific acts to be listed, his delegation favoured those enumerated in paragraph 1 (a) to (j).

57. **Mr. MOCHOCHOKO** (Lesotho) also endorsed the comments of the representative of Germany. The crime of genocide should be included and defined as in the draft Statute.

58. His delegation also supported the inclusion of crimes against humanity, and would prefer a definition consistent with existing international law requiring that the commission of acts constituting such crimes must be widespread or systematic, and committed in peace or during international or internal armed conflict. He endorsed the proposal to delete paragraph 2 under "Crimes against humanity".

59. **Ms. DASKALOPOULOU-LIVADA** (Greece) considered that the definition of genocide posed no real problems and could be sent to the Drafting Committee.

60. As far as crimes against humanity were concerned, her delegation favoured the first alternative in the *chapeau* of paragraph 1 as being less restrictive than the second.

61. Her delegation would prefer the formulation "or" to "and".

62. It was in favour of retaining all the crimes at present listed.

63. It had no strong feelings concerning the definitions and could accept the proposal to drop paragraph 2.

64. **Mr. NYASULU** (Malawi) agreed that the question of the crime of genocide could be referred to the Drafting Committee.

65. With respect to crimes against humanity, his delegation had a slight problem with paragraph 1 (h), which contained items which could have been dealt with separately. Nevertheless, it could accept the text as it stood.

66. In the *chapeau*, his delegation preferred "or" to "and". It did not support the inclusion of the word "international".

67. **Mr. FADL** (Sudan) agreed that the crime of genocide should be included in the Statute.

68. His delegation considered that crimes against humanity should refer only to international, not to internal conflicts.

69. He agreed with the Coordinator that the crime of aggression required further discussion.

70. **Mr. AL ANSARI** (Kuwait), recalling that some countries had used human beings as shields, proposed that such acts should be listed as a crime against humanity, unless paragraph 1 (e) covered the case.

71. He wondered whether paragraph 2 (a) covered acts such as the total elimination of a people's identity. If not, the Committee of the Whole should add the words "or to eliminate their identity" to paragraph 2 (a).

72. **Mr. LI Yanduan** (China) felt that the text on genocide should now be sent to the Drafting Committee.

73. He agreed with the inclusion of crimes against humanity, but wished to point out that there was no international convention as such on the subject.

74. His delegation considered that the *chapeau* of paragraph 1 should include the words "armed conflict", taking into account the Charter of the Nuremberg Tribunal, the Statute of the International Tribunal for the Former Yugoslavia and the Statute of the Rwanda Tribunal.

75. His delegation agreed with the inclusion of the crimes listed in paragraph 1 (a) to (j) but had some reservations concerning (e). It would be inclined to accept the word "imprisonment", but remained open-minded and ready to hear other views.

76. **Mr. Tae-hyun CHOI** (Republic of Korea) agreed that the definition of genocide could now be referred to the Drafting Committee.

77. His delegation believed that the concept of crimes against humanity needed a threshold, as in the wording in the first set of square brackets in the *chapeau* of paragraph 1. It was not appropriate to limit consideration of crimes against humanity to those committed in armed conflict or on a massive scale, as that would too narrowly limit the Court's jurisdiction. Moreover, the reference to "civilian" population was confusing. His delegation would prefer the word "or" to "and".

78. In paragraph 1 (e) his delegation would prefer the wording "detention or imprisonment in flagrant violation of international law", and would favour deleting paragraph 2.

79. He did not agree that crimes against humanity should be recognized as such only in international conflicts: such crimes deserved the same degree of repudiation when committed in internal conflicts.

80. **Ms. FRANKOWSKA** (Poland) agreed that the definition of genocide could now be sent to the Drafting Committee.

81. She agreed that crimes against humanity could be committed in times of peace, and the definition should apply to internal as well as international conflicts.

82. Her delegation considered that paragraph 1 under "Crimes against humanity" should read: "For the purpose of the present Statute, a crime against humanity means any of the following acts when committed as part of a widespread or systematic commission of such acts against any population."

83. It agreed that paragraph 2 should be deleted.

84. **Ms. CHATOOR** (Trinidad and Tobago) supported the inclusion of genocide and crimes against humanity within the jurisdiction of the Court. She also endorsed the remarks of the representative of Germany. Account must be taken of the recent confirmation by the Tribunal for the Former Yugoslavia that crimes against humanity could be committed in the context of any armed conflict, whether international or internal.

85. **Mr. ABDELLA AL HAMEDI** (Iraq) said that his delegation had no problem with including the crime of genocide within the Court's jurisdiction.

86. He agreed that the commission of crimes against humanity should be limited to international armed conflict and agreed with the representative of the Syrian Arab Republic that paragraph 1 (i) under "Crimes against humanity" was ambiguous.

87. **Ms. STEAINS** (Australia) expressed her delegation's concern at the argument that a connection with an international armed conflict was required for a crime against humanity. The horrific killings in Cambodia in the 1970s showed that the most heinous crimes against humanity could be committed outside the context of armed conflict, whether internal or international in nature. Her delegation strongly supported those who had argued that there was no requirement for a nexus with armed conflict in the definition of crimes against humanity.

88. With regard to the *chapeau* of paragraph 1, her delegation was in favour of the formulation "widespread or systematic commission of such acts" and the inclusion of all the elements set out in paragraph 1 (a) to (j).

89. **Ms. WILMSHURST** (United Kingdom) said that she, too, was concerned at the insistence of some delegations that there should be a nexus between crimes against humanity and armed conflict, indeed international armed conflict. In international customary law, no such nexus existed. Although, both the Charter of the Nuremberg Tribunal and the Statute of the Tribunal for the Former Yugoslavia referred to armed conflict, in both those cases the instruments had been set up after the event and neither indicated that a nexus existed in international law. Moreover, there was no such nexus in the Statute of the Rwanda Tribunal. Had there been, it was questionable whether the Tribunal would have had jurisdiction over the horrific killings that had taken place in that country. Her delegation therefore strongly supported the removal of any reference to armed conflict in the *chapeau* to paragraph 1 in the section on crimes against humanity.

90. The reference in the *chapeau* to widespread and systematic commission of the acts concerned was extremely important. As the representative of India had pointed out, the aim was to distinguish individual acts of murder from the kinds of act referred to. Her delegation therefore supported the reference to widespread and systematic commission of the acts listed. She pointed out that the article did not cover terrorist offences.

91. Her delegation endorsed the list of crimes set out in paragraph 1 (a) to (j) but was puzzled by the wish to delete paragraph 2, since some of the definitions in that paragraph might assist the Committee to agree on some of the items listed in paragraph 1 (a) to (j)—for instance, the enforced disappearance of persons. Although that concept was not yet accepted as a crime against humanity in existing instruments, her delegation would be happy to see it included if the definition was clear. She therefore appealed to delegations to consider whether the inclusion of paragraph 2 might not be useful.

92. **Ms. FERNANDEZ de GURMENDI** (Argentina) endorsed the point made by the representatives of Australia and the United Kingdom with regard to the lack of a nexus between crimes against humanity and armed conflict.

93. Her delegation would like to see the word "or" rather than "and" used in the *chapeau*, as otherwise the threshold would be too high for prosecution to be possible.

94. Her delegation favoured the list of crimes in paragraph 1 (a) to (j). It had no set position on the deletion or retention of paragraph 2.

95. **Ms. LE FRAPER DU HELLEN** (France) said that her delegation believed that crimes against humanity could be committed in peace as well as in war and against all populations.

96. In the *chapeau*, her delegation was in favour of the words "widespread and systematic" and the words "on political, philosophical, racial, ethnic or religious grounds or any other arbitrarily defined grounds".

97. Her delegation supported the list of crimes in paragraph 1 (a) to (j). In connection with (e), her delegation's preference was for the expression "detention or deprivation of liberty".

98. There had been some surprising hesitation by some delegations with respect to subparagraph (i). The United Nations Declaration on the Protection of All Persons from Enforced Disappearance, adopted by the General Assembly by consensus, had been used as the basis, and the term was generally accepted. The Declaration stated that enforced disappearances of persons "was of the nature of a crime against humanity". Logically, therefore, subparagraph (i) should be retained.

99. Her delegation was in favour of deleting paragraph 2 since the Statute already contained a provision on applicable law in article 20. She did not think that further discussion would allow progress to be made.

100. **Ms. CUETO** (Cuba), while agreeing that the provisions on genocide in the draft Statute were generally acceptable, thought that they could be expanded by the inclusion of social and political groupings and a reference to intentional conduct.

101. With reference to the German proposal to delete the second paragraph of the section on crimes against humanity, her delegation would prefer to await the views of the Working Group on General Principles of Criminal Law before taking a decision. Her delegation agreed that such crimes could be committed both in peace and in war and considered that it would not be prudent to have an unduly high threshold for the concept. Her delegation considered that the list of crimes in paragraph 1 (a) to (j) was not exhaustive.

102. The Statute should make a clear distinction between extermination and genocide, and the references to deportation or forcible transfer of population, detention or imprisonment, rape or other sexual abuse and persecution against any identifiable group or collectivity were not specific enough and should be expanded.

103. **Mr. SADI** (Jordan) suggested that it should be left to the Drafting Committee to find a wording for the *chapeau* of paragraph 1 by referring to relevant human rights case law.

104. While remaining open-minded, his delegation would like to see ethnic cleansing and the destruction of part of a population included in the list.

105. Regarding enforced disappearance of persons, that crime had been defined in human rights case law since the 1970s and the Drafting Committee could flesh out the description if necessary.

106. He questioned the need for a listing of the grounds for an attack in the *chapeau* of paragraph 1. What was in question was an attack on a population on any grounds. The reference to grounds should be deleted.

107. **Mr. NIYOMRERKS** (Thailand) said that his delegation agreed that the 1947 Genocide Convention provided the best definition of the crime of genocide.

108. His delegation believed that crimes against humanity should be qualified as widespread and systematically committed. That would ensure that crimes falling within the Court's jurisdiction were of a truly serious nature and differed from ordinary criminal offences. Moreover, his delegation believed that crimes against humanity could be committed both in peace and in armed conflict.

109. **Ms. TOMIČ** (Slovenia) said her delegation believed that crimes against humanity should be considered as separate from war crimes and that they could be committed in times of war or of peace. In a case before the International Tribunal for the Former Yugoslavia it had been ruled that under customary international law crimes against humanity did not require a connection to international armed conflict. Reference to armed conflict in the *chapeau* of paragraph 1 should therefore be deleted. The threshold for such crimes should be kept low, and the wording should be "widespread or systematic commission". The Tribunal for the Former Yugoslavia had also ruled that as long as there was a link with a widespread or systematic attack against a civilian population, a single act could qualify as a crime against humanity. The words "committed on a massive scale" should therefore be deleted.

110. She supported the listing of crimes against humanity in paragraph 1 (a) to (j).

111. **Mr. STIGEN** (Norway) agreed that the text on genocide should be sent to the Drafting Committee.

112. With respect to crimes against humanity, his delegation saw no need for a connection with armed conflicts. In the *chapeau* of paragraph 1 it would prefer the word "or" to "and". It was in favour of the listing in paragraph 1 (a) to (j) and saw no need for paragraph 2. The Conference should not try to define crimes against humanity.

113. **Mr. KOFFI** (Côte d'Ivoire) thought that the definition of genocide should now be transmitted to the Drafting Committee.

114. With respect to crimes against humanity, his delegation would prefer the wording "as part of a widespread or systematic attack in paragraph 1". No distinction should be made between the commission of crimes against humanity in peace or in war or between internal and international conflicts.

115. His delegation had no problem with the inclusion of paragraph 2.

116. **Mr. de KLERK** (South Africa) agreed that the definition of genocide could be referred to the Drafting Committee. His delegation supported the inclusion, in the definition, of conspiracy to commit genocide, attempt to commit genocide and complicity in genocide, but he agreed with the representative of India that further discussion should be postponed.

117. With regard to paragraph 1 of the section on crimes against humanity, his delegation was in favour of not linking the offences with armed conflict and preferred the word "or" rather than "and", for the reasons given by previous speakers. His delegation would have some comments on the offences listed in subparagraphs (e), (g) and (h) of paragraph 1 which could be best made in the relevant working group.

118. He agreed that paragraph 2 was unnecessary.

119. **Mr. MEKHEMAR** (Egypt) agreed that the definition of genocide was satisfactory and could now be transmitted to the Drafting Committee.

120. His delegation considered that crimes against humanity could be committed in times of peace or of war. However, to differentiate them from ordinary crimes, they should be described as systematic and widespread.

121. **Mr. MAHMOOD** (Pakistan) said that Pakistan opposed the concept of inherent jurisdiction of the Court for the crimes listed in article 5. All those crimes should be subject to the principle of complementarity, which would

be violated if the Court were to be given inherent jurisdiction. However, it should not be possible to exclude the "core" crimes from the Court's jurisdiction by a declaration.

122. Concerning the crime of genocide, the Genocide Convention, to which Pakistan was a party, gave States parties authority to try offenders. Pakistan had no problem with the inclusion of the crime of genocide provided it was subject to the principle of complementarity. Pakistan supported the inclusion of crimes against humanity in the Statute, but would make its comments at a later stage.

123. **Ms. FLORES** (Mexico) agreed that the definition of genocide could be referred to the Drafting Committee. References to conspiracy and attempt to commit genocide and complicity in genocide should be discussed by the Working Group on General Principles of Criminal Law.

124. Her delegation considered that crimes against humanity could be committed both in peace and in war and did not agree to their being linked with armed conflict. Such crimes should be qualified as "widespread or systematic" and no grounds needed to be spelt out.

125. Her delegation had no problems with the crimes listed in paragraph 1 (a) to (i), except that it considered that "persecution" and "enforced disappearances" would benefit from a definition. It did, however, have difficulties with (j) ("other inhumane acts"). An exhaustive list was required to satisfy the principle *nullum crimen sine lege*. Moreover, apartheid should have been included in the list.

126. Her delegation would reserve its comments on some of the texts in square brackets for discussion in the relevant working group.

127. **Ms. SHAHEN** (Libyan Arab Jamahiriya) agreed that the definition of the crime of genocide should be referred to the Drafting Committee.

128. She pointed out that in the draft Statute crimes against humanity were focused on acts violating physical integrity and not moral integrity. Nothing was said about the prohibition on practising religion, for instance.

129. She considered that the expression "political organization" in paragraph 2 (e) was too vague and that a clearer definition was needed. The Court should not invoke crimes of that type as a means of intervening in the internal affairs of States and infringing their sovereignty under the pretext of international legality.

130. **Ms. TRÖNNINGSDAL** (Finland) said, with respect to crimes against humanity, that she was in favour of the wording "as part of widespread or systematic commission of such acts".

131. She supported the retention of the list of crimes in paragraph 1 (a) to (j) and could agree to the deletion of paragraph 2 if that was the general wish.

132. **Ms. VARGAS** (Colombia) agreed with the definition of genocide in the draft Statute. Like the representative of Germany, she considered that matters such as complicity with genocide would be better dealt with in the Part 3 of the Statute on general principles of criminal law.

133. Her delegation also agreed that crimes against humanity should be covered by the Statute. There should be no link with armed conflict; such crimes could be committed in times of peace. She agreed that all the crimes listed

in subparagraphs (a) to (i) of paragraph 1 should be included, but her delegation had the same problems on (j) as the delegation of Mexico.

134. The question of including paragraph 2 should be discussed in a working group.

135. **Mr. SHARIAT BAGHERI** (Islamic Republic of Iran) agreed that the crime of genocide should fall within the jurisdiction of the Court.

136. His delegation considered that crimes against humanity could be committed in times of peace or war. It was in favour of the wording "widespread and systematic attack". It agreed that paragraph 2 should be deleted.

137. **Ms. BOREK** (United States of America) believed that genocide should be included in the draft Statute and that ancillary crimes should be dealt with comprehensively in the section on general principles of law.

138. With respect to crimes against humanity, she wished to point out that if situations arising in times of peace were not covered the Court would be denied jurisdiction over many of the crises that it should address.

139. Her delegation appreciated the concerns about sovereignty expressed by some delegations, and considered that care needed to be taken to avoid vagueness in the list of crimes; even some of the definitions in paragraph 2 were vague. Her delegation would be submitting a paper on elements of crimes taking account of the many useful comments it had received. Many offences were violations of human rights but could not be called crimes against humanity, which meant only the most atrocious crimes. It was therefore important to elaborate the elements of crimes. The list should be exhaustive to meet the principle of *nullum crimen sine lege*.

140. She agreed that there was no intention to cover terrorism in the list.

141. **Mr. HERSI** (Djibouti) agreed that the text on genocide could now be transmitted to the Drafting Committee.

142. With respect to crimes against humanity, he agreed on the inclusion of all the crimes identified. However, in the *chapeau* of paragraph 1, he considered that it would be difficult to apply the requirement that an attack against any civilian population had to be widespread. The Drafting Committee should seek more appropriate wording.

143. **Mr. EFFENDI** (Indonesia) supported the inclusion of both genocide and crimes against humanity in the Statute. He agreed that the text on genocide should be submitted to the Drafting Committee.

144. With respect to crimes against humanity, his delegation supported the first option in the *chapeau* of paragraph 1, and would prefer "and" to "or".

145. **Mr. GARCIA LABAJO** (Spain) said that his delegation agreed that the text on genocide should be sent to the Drafting Committee.

146. He agreed with the German representative that conspiracy, incitement and attempt to commit genocide and complicity in genocide would be more appropriately covered in Part 3 of the draft Statute, and specifically in article 23.

147. His delegation endorsed the view that crimes against humanity could be committed both in peacetime and in armed conflict, whether internal or international. Prosecution of crimes against humanity should not be confused with international humanitarian law, as otherwise the victims of atrocities might be left unprotected.

148. The terms "widespread" and "systematic" were not synonymous: the former was a quantitative description whereas the latter was qualitative. His delegation preferred the formulation "widespread or systematic".

149. **Mr. IVAN** (Romania) said his delegation believed that the crimes against humanity covered by the Statute should include acts committed both in international and non-international conflicts and also in peacetime. He therefore opposed a nexus with armed conflict.

150. His delegation was in favour of the wording "widespread or systematic" and of the deletion of paragraph 2. It agreed that the text on genocide should be sent to the Drafting Committee.

151. **Ms. DIOP** (Senegal) agreed that the text on genocide should be referred to the Drafting Committee and also that conspiracy, incitement and attempt to commit genocide and complicity in genocide should be included in Part 3.

152. In view of recent events, her delegation considered that the jurisdiction of the Court should apply to crimes against humanity committed during war or peace, and in internal or international conflicts.

153. **Mr. PALIHAKKARA** (Sri Lanka) agreed that the text on genocide could be sent to the Drafting Committee.

154. On crimes against humanity, the introductory wording to paragraph 1 would be decisive, and informal consultations were therefore necessary. His own delegation's inclination was to have a description that was not situation-specific or motive-related and would be valid in peace and in war.

155. His delegation had no difficulties with the list of crimes in paragraph 1, except that it shared the doubts expressed by the representative of Mexico with regard to subparagraph (j).

156. His delegation believed that paragraph 2 should be deleted; it would be unproductive to spend too much time on definitions.

157. **Mr. RODRIGUEZ CEDEÑO** (Venezuela) agreed that the text on genocide could be sent to the Drafting Committee.

158. He also agreed that crimes against humanity could be committed at any time and in any context. His delegation would prefer the wording "widespread or systematic attack".

159. In the list of crimes, both subparagraph (e) and subparagraph (i) were necessary and should be retained.

160. He agreed with the United Kingdom representative that paragraph 2 should not be deleted without further consideration.

161. **Mr. POLITI** (Italy) agreed that the text on genocide should be sent to the Drafting Committee and that conspiracy, incitement and attempt to commit genocide and complicity in genocide would be better addressed in Part 3.

162. With regard to crimes against humanity, his delegation agreed that, in the *chapeau* of paragraph 1, there should be no nexus with armed conflict, whether international or internal. His delegation was in favour of the wording "widespread or systematic attack".

163. As to the list of crimes, his delegation was in favour of including all the subparagraphs. In subparagraph (g), the words "of comparable gravity" were unnecessary. He strongly supported the inclusion of the words "or gender" in (h).

164. The "other inhumane acts" referred to in (j) should also be included, since otherwise new kinds of crime against humanity would go unpunished. "Inhumane acts" had been recognized by the Nuremberg, Former Yugoslavia and Rwanda Tribunals. They were also prohibited by the article 3 common to the Geneva Conventions and by the Convention against Torture.

165. His delegation, like others, would prefer the deletion of paragraph 2.

166. **Ms. CONNELLY** (Ireland) agreed that the text on genocide should be referred to the Drafting Committee.

167. She agreed that, in accordance with international law, crimes against humanity could be committed in times of armed conflict or in times of peace. The representative of Mexico had wished to include apartheid in the list of crimes: that was the subject of a convention in which there was no link with times of armed conflict.

168. The *chapeau* was clearly needed to distinguish individual criminal acts from the heinous crimes that were to be brought within the Court's jurisdiction. Her delegation was in favour of the wording "widespread or systematic attack".

169. She agreed with the representative of Jordan that there was no need for a reference to "grounds" in the *chapeau*. The right place for a reference to such grounds was in subparagraph (h). She supported the inclusion of "gender" in that subparagraph.

170. As to the inclusion of paragraph 2, her delegation remained flexible and would wait to hear further comments.

171. **Mr. GÜNEY** (Turkey) agreed that the text on genocide should be sent to the Drafting Committee.

172. As to crimes against humanity, his delegation was in favour of the wording "widespread and systematic attack" in the *chapeau* of paragraph 1, in line with established case law.

173. His delegation had difficulties with the present wording of paragraph 1 (i), which was confusing and could give rise to divergent interpretations in practice.

174. **The CHAIRMAN**, summing up the discussion, said that there seemed to be agreement that the text on genocide could be referred to the Drafting Committee. He suggested that the unbracketed part of the section on genocide might be referred to the Drafting Committee on the understanding that the suggestions concerning elements of crimes would be dealt with in the discussion on crimes against humanity. Some delegations had suggested that the part of the text on genocide in square brackets be included in Part 3 of the draft Statute, while others had indicated that they could take no final position until further progress had been made on Part 3. He therefore suggested that the bracketed part of the text should not be referred to the Drafting Committee for the time being.

175. He had noted that all delegations were in favour of including crimes against humanity in the Statute. With regard to the *chapeau* of paragraph 1 in that section, there were differences of view as to whether the adjectives "widespread" and "systematic" should be joined by "or" or "and", and further discussion on that point was clearly needed.

176. There was a difference of opinion as to whether there should be a nexus between crimes against humanity and armed conflict, and some delegations also wished to limit "armed conflict" to international armed conflict.

177. Questions had been raised as to the interpretation of some of the crimes in the list in subparagraphs (a) to (j) of paragraph 1. Subparagraph (i) on enforced disappearance of persons had given rise to more substantive comments, which would have to be addressed in due course. With regard to subparagraph (j), some delegations would prefer the list of "inhumane acts" to be exhaustive.

178. It had been suggested that the crime of apartheid should be added to the list.

179. With respect to paragraph 2, further discussion would be needed, since some delegations wished to delete it while others considered that at least some of the definitions would be useful in enabling general agreement to be reached.

The meeting rose at 1 p.m.